

REMARKS/ARGUMENTS

The Office Action mailed on January 8, 2010 has been carefully considered. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

Claims 1-36 are currently pending in the instant application. Claims 16-35 have been withdrawn from further consideration as being drawn to a non-elected species. In order to advance prosecution, claims 16-35 have been cancelled without prejudice, Applicants reserving the right to prosecute claims 16-35 at a later time. New claim 36 is respectfully submitted for consideration by the Examiner. No new matter has been introduced by the addition of claim 36.

Claims 1-8 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by USPN 6,126,899 ("Woudenberg"). Claims 9-11 and 14 stand rejected under 35 U.S.C. 1 03(a) as being unpatentable over Woudenberg in view of USPubl 2003/0138941 ("Gong"). Claim 15 stands rejected under 35 U.S.C. 1 03(a) as being unpatentable over Woudenberg in view of Gong as applied above and in further view of USPubl 2003/0166265 ("Pugla"). Claim 12 stands rejected under 35 U.S.C. 1 03(a) as being unpatentable over Woudenberg in view of USPubl 2005/0064154 ("Aylward"). Applicants traverse the rejection for the reasons discussed below.

Claims 1-8 and 13 Are Not Anticipated by Woudenberg.

Claim 1, as amended, is directed to an assay device comprising, in pertinent part, a substrate and an optically transparent cover, wherein and the substrate comprises a material having a glass transition temperature of greater than about 115°C. Woudenberg does not disclose a substrate material having a glass transition temperature of greater than about 115°C. Indeed, the maximum temperature even mentioned in Woudenberg is only about 95°C.

The current Office Action asserts that the substrate material has the inherent property of having a "softening temperature, or a glass transition temperature of greater than about 115°C". Applicant traverses such assertion. With regard to inherency, MPEP § 2112 states:

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of

circumstances is not sufficient.'” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

In the instant case, the current Office Action provides no evidence that the materials disclosed by Woudenberg would inherently have a glass transition temperature greater than about 115°C. Indeed, Woudenberg does not even suggest a glass transition temperature, or any other temperature, greater than about 115°C, as discussed above. Furthermore, the current Office Action provides no basis or support for its position that a person of ordinary skill would recognize that the materials disclosed by Woudenberg would inherently have a glass transition temperature of greater than about 115°C, as required by MPEP § 2112.

Claims 9-11 and 14 Are Patentable Over Woudenberg and Gong.

Gong does nothing to cure the defects of Woudenberg with respect to claim 1, as amended. Thus, claims 9-11 and 14, which incorporates all the limitations of claim 1, are patentable over Woudenberg and Gong for at least the same reasons claim 1 is patentable thereover, and are patentable in their own right as well.

Claim 15 Is Patentable Over Woudenberg, Gong, and Pugla.

Gong and Pugla do nothing to cure the defects of Woudenberg with respect to claim 1, as amended. Thus, claim 15, which incorporates all the limitations of claim 1, is patentable over Woudenberg, Gong, and Pugla for at least the same reasons claim 1 is patentable thereover, and is patentable in its own right as well.

Claim 12 Is Patentable Over Woudenberg and Aylward.

Claim 12 is directed to the assay device of claim 1, wherein the substrate comprises an aromatic polyester, an aromatic-aliphatic polyester, an aromatic poly (ester-amide), an aromaticaliphatic poly (ester-amide), an aromatic polyazomethines, an aromatic polyestercarbonate, a copolymer thereof, or a combination thereof. Aylward does nothing to cure the defects of Woudenberg with respect to claim 1, as amended. Thus, claim 12, which incorporates all the limitations of claim 1, is at least patentable over Woudenberg and Aylward for at least the same reasons claim 1 is patentable thereover.

In addition, neither Woudenberg nor Aylward disclose an assay device comprising any of the aromatic materials recited in claim 12. Aylward is generally directed to an antistatic

Application No.: 10/585,382
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article for use in display products or other products having an electrically modulated imaging material on a support. Clearly, one of skill in the art associated with the subject matter disclosed in Woudenberg would not look for guidance to technology in the field of antistatic article for use in display products. For example, materials appropriate for use in an assay device such as that disclosed in claim 1 would require compatibility reagents and biological specimens that would not necessarily be present in material used in the fabrication of display products or other products having an electrically modulated imaging material on a support. Thus, one of skill in the art would have neither an incentive, nor an expectation of success, in combining Aylward with Woudenberg, at least because Aylward and Woudenberg are from non-analogous art fields.

In light of the above, Applicants respectfully assert that claims 1-15 are patentable over the prior art currently of record. In addition, new claim 36 is believed to be patentable for at least reasons similar to those for which claim 12 is patentable thereover. Accordingly, Applicants request the Examiner allow claims 1-15 and 36.

CONCLUSION

For the foregoing reasons, Applicant respectfully asserts that the claims now pending are allowable over the prior art of record. Therefore, Applicant earnestly seeks a notice of allowance and prompt issuance of this application.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication to Deposit Account No. 503994.

Respectfully submitted,
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Dated: July 8, 2010

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